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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL DOCKET NUMBER:

IN RE: JOHNSON & JOHNSON
TALCOM POWDER PRODUCTS
MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY
LITIGATION

3:16-md-2738-FLW-LHG

STATUS CONFERENCE VIA REMOTE
ZOOM VIDEOCONFERENCE

Date: March 31, 2021
Commencing at 3:30 p.m.

B E F O R E: JOEL SCHNEIDER, USMJ, RET.

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 Rachel L. Goodman, Esquire
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1 Committee. It's a pleasure to meet you.
 2 MR. PLACITELLA: Good afternoon, Your Honor,
 3 Chris Placitella. Hope you are well. I'm the liaison
 4 counsel for the plaintiffs.
 5 MR. LAPINSKI: Your Honor, good afternoon.
 6 Dan Lapinski from the Motley Rice firm.
 7 MR. TISI: Good afternoon, Chris -- this is
 8 Chris Tisi from Levin Papantonio Rafferty at the -- on
 9 behalf of the plaintiffs.
 10 MR. BERMAN: I may be the last, Laurence
 11 Berman, Levin Sedran & Berman, also for the plaintiffs.
 12 SPECIAL MASTER SCHNEIDER: Mr. Placitella,
 13 you either have the nicest, organized library I've ever
 14 seen, or a very nice backdrop picture.
 15 MR. PLACITELLA: I just finished a seminar
 16 and, admittedly, it is a backdrop picture.
 17 SPECIAL MASTER SCHNEIDER: Okay.
 18 Defendant.
 19 MS. SHARKO: Susan Sharko from Drinker
 20 Biddle, now known as Faegre Drinker, for the J&J
 21 defendants.
 22 MR. BERNARDO: Good afternoon, Your Honor,
 23 Rich Bernardo from Skadden Arps, also for the
 24 defendants.
 25 And thank you, and thank you all, for

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1 (PROCEEDINGS held via remote Zoom
 2 videoconference before Joel Schneider, USMJ, Ret., at
 3 3:30 p.m.)
 4 SPECIAL MASTER SCHNEIDER:
 5 This is replacement Special Master Retired
 6 Judge Schneider. We are here on the Talc MDL, 16-2738.
 7 This is my first call with counsel. I'm delighted to
 8 be here.
 9 I don't know what the protocol is with Judge
 10 Pisano. My understanding, I could be wrong, was that he
 11 didn't have a court reporter for his conferences, but I
 12 was looking at Judge Wolfson's order from 2017, Docket
 13 Number 704, and I got the impression that the
 14 proceedings should be of record. So I'm just going to
 15 follow the instructions. I don't think it's a bad
 16 practice to put our calls on the record.
 17 Why don't we start with the, I guess,
 18 introduction and entries of appearances. Start with
 19 the plaintiffs as we usually do.
 20 MS. O'DELL: Good afternoon, Judge, Leigh
 21 O'Dell from Beasley Allen on behalf of the plaintiffs,
 22 the Steering Committee.
 23 MS. PARFITT: Good afternoon -- good
 24 afternoon, Your Honor, Michelle Parfitt, Ashcraft &
 25 Gerel, on behalf of the plaintiffs, the Steering

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1 accommodating my -- my COVID shot. As you all know
 2 it's been an ordeal to try to get an appointment. So
 3 moving in line with -- and anyway, I appreciate the
 4 courtesy.
 5 MR. TISI: Show me hand, Richard.
 6 MR. BERNARDO: It had nothing to do with my
 7 COVID shot, unfortunately.
 8 Judge Schneider, just so you know, I am a
 9 total mess, I got a COVID shot, my hand is broken.
 10 It's not off to a good start.
 11 (Discussion off the record.)
 12 MR. BEISNER: Your Honor, it's John Beisner
 13 also from Skadden Arps on behalf of the J&J defendants.
 14 MS. BRENNAN: Good afternoon, Your Honor,
 15 Jessica Brennan, Faegre Drinker, on behalf of the J&J
 16 defendants.
 17 MR. LOCKE: Good afternoon, Your Honor, Tom
 18 Locke, Seyfarth Shaw, on behalf of the Personal Care
 19 Products Council.
 20 SPECIAL MASTER SCHNEIDER: Rachel, you want
 21 to put your name on the record just so everyone knows
 22 who you are.
 23 MS. GOODMAN: Sure. This is Rachel Goodman,
 24 Montgomery McCracken.
 25 SPECIAL MASTER SCHNEIDER: So I just want to

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1 say that I'm delighted to have the appointment by Chief
2 Judge Wolfson, although, like you all, I regret the
3 circumstances under which the appointment occurred.

4 I knew Judge Pisano. He was a gentleman. He
5 gave me some great advice when I first joined the
6 bench, and will be missed. And I know I have big shoes
7 to fill, but I'm going to do my best.

8 I see some familiar faces on the phone, which
9 is great, and I'm sure you all did your due diligence
10 about who I am and where I came from. So there is no
11 need to go into that.

12 In sum and substance, I just retired after 14
13 years as a magistrate judge in Camden. And I guess the
14 last five or six years I had the pleasure of working on
15 two MDLs with Judge Kugler. Then I closed one, which
16 was resolved and Valsartan, which is still going on.
17 And I learned a lot that I think could help and will
18 help me grapple with the issues in this case. But I
19 know this case has a long tail, and there is a lot to
20 know.

21 I did a fair amount of work to get ready for
22 this call. I think I understand the general issues and
23 the complexity of this case, because of the parallel
24 proceedings in not only New Jersey State Court, but
25 state court around the country. I know we have to

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1 I sent an e-mail to Special Master Norton in
2 Missouri just alerting him to my appointment. And I
3 recently sent an e-mail to Judge Burlison in Missouri,
4 I think it is, notifying him of my appointment. But
5 again, we have had no conversations whatsoever. So to
6 put your mind at ease, I have had no substantive
7 conversations either in person or e-mail with any of
8 these people. I thought it was appropriate to wait to
9 get some insight from you.

10 My general understanding of where we are is
11 as follows: I know that the focus of this MDL to date
12 has been on the Daubert issues. I know that you dealt
13 with causation discovery. I know that Judge Pisano
14 recently entered an order permitting some corporate
15 depositions to go forward.

16 I'm generally under the impression that you
17 are now in the phase of the case where you are seeking
18 to identify and work up bellwether cases. I would like
19 to get a little bit more detail on where you are on
20 that.

21 At one time I saw on the docket a scheduling
22 order. I tried to track it down, but the docket is
23 just so big and my computer power is not that strong.
24 I just couldn't find it again. So I'm sure you can
25 alert me. But I have a vague recollection that at

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1 grapple with those issues.

2 I thought a good way to start this call was
3 just to -- instead of you telling me the history of the
4 case, I'll generally tell you what I know and if you
5 think there is any gaps that need to be filled, we'll
6 fill them in.

7 Talk about the general status of the case;
8 talk about the issues that you would like me to
9 address. I'm aware of the privilege issue and the
10 deposition issue.

11 And then when we leave this conference have
12 some sort of schedule for how we are going to proceed
13 with deadlines. I don't think any decisions will be
14 made today.

15 Just so you know, again, I'm new to this
16 asbestos talc world. So I introduced myself to the
17 players who I thought ought to know about my
18 appointment. I alerted Judge Porter with New Jersey
19 State Court of my appointment. We had a very brief
20 conversation. He's an incredibly gracious and nice
21 gentleman.

22 I alerted Judge Viscomi by e-mail of my
23 appointment. We had no substantive conversations about
24 the cases. He acknowledged my e-mail. Wished me the
25 best.

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1 least the last scheduling order was sometime in May or
2 June you were going to finish fact discovery.

3 That's what I know about the general status
4 of the case. At least the two general issues that we
5 are going to discuss today are privilege and
6 depositions. Anything else you want to discuss is
7 fine, we can, of course, discuss that.

8 But in terms of just a general status of the
9 case, and maybe dealing with it at sort of a
10 10,000-foot level, is my understanding of where we are
11 generally correct; you are through causation, Daubert,
12 discovery? It doesn't sound -- I could be wrong, it
13 doesn't sound like you've identified yet the
14 bellwethers that you are going to go to trial with, but
15 you have a subset of cases from which those cases are
16 going to be selected. Some or all of them are being
17 worked up now and at least at sometime in the past
18 there was a deadline that Judge Wolfson probably set to
19 finish fact discovery on those cases.

20 So that's my general understanding of where
21 we are. Maybe starting with the plaintiffs, can you
22 tell me what I missed and what I should know.

23 Again, we are just talking from a 10,000-foot
24 level, because there is just so much history here that
25 I may not need to know to do the work that I was asked

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1 to do.

2 MS. PARFITT: Judge, this is Michelle
3 Parfitt, I am a plaintiff's colead.

4 And perhaps just to start with the bellwether
5 and then pass to my partner and others.

6 We have, in fact, as of yesterday, we have
7 whittled down the number of bellwether selections to
8 three each. The process started months ago where we
9 worked up preliminarily about 30 cases and then each
10 side selected four, and then yesterday we -- each side
11 struck one case from the other side.

12 So, we are really at the phase of bellwether
13 wherein we have now, both plaintiff and defendant have
14 three cases each, and those cases will then move
15 forward with regard to a more fulsome discovery
16 process. So that's where we are right now. So that is
17 moving full steam ahead, and we are obviously
18 encouraged and excited about that process.

19 So I took the very last comment that you
20 talked about first with regard to where we are on the
21 case-specific discovery.

22 And you are absolutely correct with regard to
23 Daubert. We spent the last few years working up that
24 aspect of the case, and again, very excited to be
25 getting to the liability portion of the case which,

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1 So we have a fairly arduous schedule ahead of
2 us with regard to those six cases, but we've begun that
3 process and, again, optimist that we will be able to
4 have a trial the first of 2022.

5 SPECIAL MASTER SCHNEIDER: I'm going to pick
6 on you, because I have you in my box here.

7 The latest scheduling order, the one I saw at
8 one time that I couldn't track down; one, do you know
9 the docket number; and, 2, do you have the dates handy
10 what those deadlines are?

11 MS. PARFITT: I'll do better than that. Now
12 why don't we send that. How about that? I feel like
13 I'm in law school now and I'm the block that you found,
14 right, I'm being called, I'm Vannah White.

15 No, no, I'm delighted to give the infor --
16 why don't we do this, we can send you a copy of not
17 only the scheduling order. How will that be? Then you
18 will have that.

19 SPECIAL MASTER SCHNEIDER: Okay, do you know
20 the deadlines offhand? Because it -- it probably will
21 be important for what we talk about today in terms of
22 scheduling.

23 MS. PARFITT: I do. If you give me just a
24 few minutes, I'll go ahead and get that handy for you,
25 okay?

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1 frankly, brings many of the issues to you.

2 And I'll pass the baton to my partner, Leigh,
3 and see if she wants to add anything to that.

4 SPECIAL MASTER SCHNEIDER: Could I just ask
5 you a question there?

6 MS. PARFITT: Yes, mm-hmm.

7 SPECIAL MASTER SCHNEIDER: So there is a
8 total of six cases that are now in the bellwether pool.

9 MS. PARFITT: Yes.

10 SPECIAL MASTER SCHNEIDER: Do I take it that
11 there is a general consensus that you are going to work
12 up those six individual cases as if they are -- all six
13 are going to go to trial?

14 MS. PARFITT: That is correct. And then what
15 will happen is, the plaintiffs will have the
16 opportunity to make the first selection for the first
17 bellwether trial; then the defendants will make the
18 next selection for the second case.

19 So we are on track to move forward. Judge
20 Wolfson has indicated that she's hopeful that we will
21 perhaps in 2022 be able to actually have a trial. And,
22 again, we are enthused about that.

23 The discovery order that is before the court
24 right now with regard to those bellwether cases takes
25 us through to about December of 2021.

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1 SPECIAL MASTER SCHNEIDER: Okay.

2 MS. PARFITT: All right.

3 SPECIAL MASTER SCHNEIDER: So if you want to
4 pass it off in the meantime to your colleague, that's
5 fine.

6 MS. O'DELL: Then, great, I will take the
7 baton, Judge.

8 I will say the initial deadline is May 15th
9 for additional discovery in the cases that were
10 selected, initial fact discovery. And if not mistaken,
11 we depose experts July the 2nd, and it sort of moved
12 through, you know, for the remainder of the year.

13 But we'll put the order in the chat or
14 circulate it, if that is of help to you.

15 And so most of that work, Your Honor, will be
16 case-specific work. And the expert causation work
17 would be really in somewhat of a separate track than
18 the liability discovery, you know, that will likely be
19 the subject of this call, whether it be privilege
20 challenges, corporate witness depositions, et cetera.

21 SPECIAL MASTER SCHNEIDER: Generally, from
22 plaintiffs' perspective as to these six cases, is there
23 any, I'll call it fact discovery, generally, we can get
24 into specifics after we drill down a little bit, that
25 you want to take? Are there additional fact

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1 depositions that -- apart from the ones that Judge
 2 Pisano dealt with that you want to take?
 3 MS. O'DELL: Your Honor, let me make sure I'm
 4 clear on your question.
 5 Are you will talking about in the individual
 6 cases that have been selected for the bellwether pool?
 7 SPECIAL MASTER SCHNEIDER: Just the six.
 8 Because that's all we are dealing with now; the six
 9 cases, right?
 10 MS. O'DELL: Yes, sir. But in terms of the
 11 bellwether preparation, that would be correct. And I
 12 suspect in each of those individual cases, there will
 13 be additional fact witnesses, lay witnesses, and then
 14 also treating, other kind of health care professionals.
 15 We haven't done that analysis, but I suspect that will
 16 occur.
 17 But in a separate independent track, you
 18 know, the Plaintiffs' Steering Committee would like to
 19 focus on corporate witness depositions that haven't
 20 been taken, certainly not in this MDL, but in other
 21 state court proceedings as well.
 22 And so that liability discovery is something
 23 that we really have not had a opportunity to turn our
 24 attention to.
 25 SPECIAL MASTER SCHNEIDER: Are you going to

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1 discovery we need to do from a more general standpoint,
 2 not case specific, that would be usable in the
 3 bellwether trials that Judge -- that Judge Wolfson has
 4 indicated she intends to try.
 5 The other aspect and the other -- I need to
 6 keep on is the development of a trial package for the
 7 purposes of -- for the purposes of any case that might
 8 be remanded from her court.
 9 And so to answer your question, I believe
 10 there are two subtracks here. That would be on one
 11 hand trying to make sure that we have the liability
 12 testimony necessary to prove our case on the liability
 13 side for the cases that are bellwether cases and the
 14 other one is a more long-term.
 15 I would also add here, there are other
 16 potential third parties that we are looking into in
 17 addition to corporate witnesses. We are evaluating
 18 those. And so -- so I didn't want to leave this
 19 conversation without -- without saying that your
 20 question was premised on corporate liability witnesses,
 21 but there might be some third-party witnesses who we
 22 need to discuss as well.
 23 I hope I have answered your question.
 24 SPECIAL MASTER SCHNEIDER: Let me ask you
 25 this question: Does anyone disagree with the notion

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1 ask to take any corporate depositions other than the
 2 ones that Judge Pisano dealt with in his recent order?
 3 MS. O'DELL: You know, right now, I'll defer
 4 to my colleague, Chris Tisi, who has been sort of
 5 spearheading the discovery, liability discovery.
 6 And so Chris, if you want to take that
 7 question you can provide a more fulsome answer. The
 8 answer -- the true answer, I believe, Judge, is no.
 9 But, Chris, please take it -- take it from there.
 10 MR. TISI: Well, Your Honor, the only reason
 11 I know -- this is Chris Tisi, for the record, on behalf
 12 of Plaintiffs' Steering Committee.
 13 There -- we mentioned -- you raised another
 14 one yesterday of -- Rich Bernardo, who is my
 15 counterpoint on the other side, we talked about Mr.
 16 Jutkowski (phonetic) -- I'm sorry, Mr. -- he's a
 17 witness, I'm forgetting the name. Rich, maybe you can
 18 help me out on it but...
 19 As we go through and are appearing to these,
 20 there may be other corporate witnesses who we want to
 21 depose.
 22 I mean we have -- one of the things, I think,
 23 to back up, if you don't mind, we have kind of a dual,
 24 a dual responsibility here that I'm trying to navigate.
 25 One is to take whatever corporate and third-party

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1 that we ought to have -- we ought to set a deadline
 2 where the plaintiffs, and probably the defendants as
 3 well, identify what additional discovery they want just
 4 on these six bellwether cases?
 5 Ms. Sharko.
 6 MS. SHARKO: Yes. So in terms of
 7 case-specific discovery relating to these specific
 8 plaintiffs, we have that order in place. We have to
 9 complete fact discovery by May 14. We have deadlines
 10 for expert reports. Expert depositions are to be
 11 completed by December 3. And then we move back into
 12 Daubert with case-specific Daubert, which we haven't
 13 done, and other dispositive motions.
 14 So I think in terms of what specific
 15 discovery do we need about this plaintiff or that
 16 plaintiff, we have a schedule on that.
 17 SPECIAL MASTER SCHNEIDER: Here's what I was
 18 thinking about, Ms. Sharko.
 19 I know we have a May 14th date. So I'm
 20 trying to get you to that date; finished, done, no
 21 extensions.
 22 Wouldn't it be prudent to identify, say, in a
 23 week or two, what discovery, say, the plaintiffs want.
 24 Because if there is going to be an objection, let's tee
 25 up the objection, get it decided so that we don't get

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1 to May 12th and we have to tee up the issue for
2 decision. And if it's -- if plaintiff is permitted to
3 go forward with the discovery, it will never get done
4 by May 14th.

5 So if plaintiff intends -- I'm just talking
6 about the 6th now. If plaintiff intends to take, say,
7 third-party discovery with regard to these six,
8 wouldn't it be prudent for them to identify in a week
9 or two or whatever date we agree to, what they want to
10 take.

11 If there is no objection, fine, plaintiffs
12 have until May 14th to finish.

13 If there is an objection, we can tee up the
14 objection sooner rather than later so we can meet that
15 May 14th date rather than what usually happens is, come
16 May 7th or 10th or 12th, Oh, by the way, Judge, you got
17 to decide this issue, and we need an extension of time,
18 because if you are permitted to go forward, we'll never
19 get it done by the deadline. That's what I'm thinking.

20 MS. SHARKO: So I think in fair -- in
21 fairness to the plaintiffs, what the parties intended
22 by the May 14 deadline was the deadline to complete the
23 depositions of the friends and relatives, the doctors,
24 employers, whatever people have specific knowledge
25 about a given plaintiff.

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1 no contemplation of a cutoff of that, because we really
2 are getting started.

3 And so, you know, we are very open to what
4 Your Honor would like in terms of contemplating a
5 schedule. But trying to get those depositions done by
6 May 14th, I'm not sure, you know, how that can be
7 accomplished.

8 SPECIAL MASTER SCHNEIDER: Yeah.

9 Well, Ms. O'Dell, I'm in a tough position
10 here, because in my former life I had some say over the
11 schedule, and I would say, "extension granted."

12 But right now my hands are tied, and I have
13 to live with this May 14.

14 Now, I don't disagree with you that I would
15 love for every -- since you've already identified these
16 six cases yesterday, right? The odds are pretty good
17 you haven't rolled up your sleeves and studied these to
18 the nth degree like you will for trial, both sides,
19 right?

20 So would it be prudent to give both sides an
21 opportunity to identify, to study those cases, what
22 they want, see if there is any objections. Maybe you
23 all can agree on a reasonable new date to complete all,
24 A-L-L, discovery, not just friends and relatives,
25 doctors. Because I don't think it was anticipated when

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1 I don't think we intended May 14 to be a
2 deadline to complete any other discovery. We are happy
3 to have a deadline. May 14 might --

4 SPECIAL MASTER SCHNEIDER: What about the
5 third -- what about the third-party discovery? That's
6 fact discovery.

7 MS. SHARKO: I don't know what third-party --
8 I don't know what third-party discovery they
9 anticipate.

10 SPECIAL MASTER SCHNEIDER: That's why --
11 that's why I think -- that's why I suggest wouldn't it
12 be prudent to get that identified sooner rather than
13 later to see if there is an objection.

14 MS. SHARKO: Sure.

15 MS. O'DELL: Your Honor, we certainly would
16 be open to, you know, a schedule. But as Ms. Sharko
17 has said, and what the order says, and I sent it to you
18 by e-mail. Your Honor, somehow I can't place it in the
19 chat on the Zoom, and so I apologize for that.

20 But it really is case specific and it was
21 intended to be, as she said, family and friends,
22 specific health care providers for that particular
23 plaintiff.

24 And since we have not had opportunity to do
25 liability discovery at all, and there's been, to date,

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1 this deadline was set that there would be a carveout
2 just for doctors and friends. I think when it says
3 "fact discovery," that's everything, right,
4 third-parties, corporate depositions, everything.

5 MS. O'DELL: No, sir. Actually it says, case
6 specific, you know, fact witnesses, I believe, in
7 that -- in relation to the May 14th or May 12th -- I
8 can't remember the date -- maybe May 14th deadline.
9 And it was really --

10 SPECIAL MASTER SCHNEIDER: Don't you think
11 that that encompassed all discovery that you need for
12 trial of that case?

13 MS. O'DELL: No, sir.

14 MS. PARFITT: No.

15 SPECIAL MASTER SCHNEIDER: No?

16 MS. PARFITT: I think so.

17 I think this may be the one time, Your Honor,
18 that all of us are perhaps in agreement. Note this
19 moment. This is a good moment. You are right.

20 SPECIAL MASTER SCHNEIDER: Freeze frame.

21 MS. PARFITT: Freeze it. Freeze the frame.
22 That's right.

23 But I think the gentleman is exactly right
24 with what we -- we totally -- and that's what we are
25 hopeful to talk about today with you and if we need to

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1 go back to Judge Wolfson.

2 I will say that, as everyone has indicated,
3 that that case specific, factual specific deadlines, we
4 really did anticipate that was just to get the cases
5 worked up. I hear the Court.

6 SPECIAL MASTER SCHNEIDER: Okay.

7 MS. PARFITT: I know, I hear you completely.

8 SPECIAL MASTER SCHNEIDER: Okay.

9 MS. PARFITT: We could -- there is a lot we
10 would like to do. And that's probably what brings us
11 to you today as well, because all of those things that
12 you are talking about would be prudent to do, we would
13 like to do. There are any number of deponents that we
14 would like to talk to Your Honor about today that we
15 feel would be important to take.

16 And you are absolutely correct, there will be
17 some additional -- I suspect there will be some
18 additional deponents based upon the depositions of the
19 current list. So we --

20 SPECIAL MASTER SCHNEIDER: Can I ask you this
21 question? You are in agreement on the May 14th date,
22 fine.

23 The expert date, plaintiffs' expert date is
24 August 27th. Is it fair to state that it was
25 contemplated that before that date all fact discovery

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1 are going to do friends and family and doctors. And
2 August 1st, soup to nuts, you are going to finish
3 everything, fact discovery, on those six cases.

4 MS. SHARKO: So, Judge, if I may.

5 The deadline for the plaintiffs' expert
6 reports, which is all their expert reports, is
7 July 2nd, per the order that Ms. O'Dell, Ms. Parfitt --
8 SPECIAL MASTER SCHNEIDER: Okay. You're
9 right. Okay, I mixed it up. I have it in front of me.
10 You're right.

11 MS. SHARKO: That's okay. But I want to
12 add -- add more.

13 I don't want to inject any static, but I mean
14 we disagree -- we disagree that we are at the beginning
15 of discovery. If the car's in the garage, it's there
16 because the journey is complete.

17 Moving -- I'm not done. I'm not done.

18 Moving -- so moving -- moving on, where we
19 need the most help from Your Honor right now is on the
20 privilege issues and the requests for the deposition of
21 the lawyer.

22 SPECIAL MASTER SCHNEIDER: No problem. Easy
23 enough. I'd like to put that issue aside, though,
24 because I don't -- that's going to be easy to deal
25 with --

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1 would be done? All the fact discovery that you are
2 going to use for that case at trial?

3 MR. TISI: Judge, I don't think -- and maybe
4 part of the problem -- this is Chris Tisi, again --
5 part of the issue was that this was bifurcated. And I
6 would refer Your Honor to the December 16th letter we
7 sent to Judge Pisano. We made it clear in that letter
8 that we were going to identify additional third parties
9 on a separate track as well as perhaps some other --
10 other corporate depositions.

11 Now, in terms of the date, the August date,
12 you know, I could be wrong here, but my impression was
13 that those were proceeding on a separate -- on a
14 separate track than the generic fact discovery that we
15 were trying to work with Judge Pisano on.

16 I think you have to recall, until Judge
17 Pisano actually issued his order in January, the
18 positions of the parties were we need to do some
19 discovery; no discovery ought to need happen at all.
20 So until January happened, we were -- the car was still
21 in the garage. We couldn't do anything.

22 SPECIAL MASTER SCHNEIDER: How about this
23 suggestion. How about -- why don't you agree amongst
24 yourselves, and I can present it to Judge Wolfson or
25 you could present it to Judge Wolfson, say May 14th you

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1 MS. SHARKO: Okay.

2 SPECIAL MASTER SCHNEIDER: -- but if
3 plaintiffs' final -- these six cases, expert reports
4 are due July 2nd, can we say that all fact discovery,
5 friends and family, third parties, any corporate
6 additional depositions that you are permitted to take
7 now or in the future are going to be done by June 1?

8 MR. PLACITELLA: Your Honor, can I just --
9 can I just weigh in for one second?

10 Plaintiffs' expert report deadline was set.
11 There were certain assumptions that were going to be
12 made.

13 To the extent that the depositions of --
14 corporate depositions are relevant and would be taken
15 into account in fashioning an expert report, there's
16 gotta be -- we have to program in enough lead time
17 between when that expert report is actually due and
18 when we finish the liability discovery.

19 Now, not every expert is going to be impacted
20 by liability discovery, but some will be.

21 SPECIAL MASTER SCHNEIDER: Right.

22 MR. PLACITELLA: And when that date was
23 established, I think it was established with the
24 assumption that there would be some level of inertia
25 going forward to get things going.

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1 Unfortunately, without getting into who is
2 responsible for what, while the car may be in the
3 garage, there seems like a bunch of vehicles that have
4 been stuck in the mud.

5 So, you know, we are going to have to get
6 them out of the mud and moving forward and we may have
7 to adjust some of those deadlines. That's all I'm
8 saying.

9 SPECIAL MASTER SCHNEIDER: Would you -- would
10 you agree with me then, Mr. Placitella, that at least
11 at the moment, as far as plaintiffs are concerned,
12 there is no what I'll call a drop-dead deadline to
13 complete fact discovery for these six cases?

14 MR. PLACITELLA: Yeah, if that includes
15 third-party discovery, I think the answer is yes.

16 MS. SHARKO: That's correct.

17 SPECIAL MASTER SCHNEIDER: Okay. Do you
18 think it's prudent that we set that date, like you --
19 first you -- see if you can agree with the defendants
20 on it.

21 And by no means, by setting the date, don't
22 take that to mean that all the discovery that the
23 plaintiffs want is going to go forward. If there is an
24 objection, we have to deal with it, of course.

25 But I'm hearing that although -- and you are

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1 are not only at the mercy of the people on this phone
2 call, but we have to accommodate the schedules of other
3 people who might -- who might also need to take the
4 deposition.

5 So we have run into a situation, I'm thinking
6 I'm thinking off the top of my head of a situation, we
7 agreed on a date, it was okay with folks in Florida and
8 Missouri and the MDL, but we come to learn it wasn't
9 okay with the lawyers coordinating in California. So
10 now we had to take the date and then push it down the
11 road to a time where it could accommodate everybody.

12 So there is some scheduling challenges here
13 that I -- because of the way in which this case has
14 progressed that at least have to take into
15 consideration as we set those dates.

16 If we were with just setting those dates for
17 doctors, for example, case-specific doctors in this
18 case, those are relatively easy to schedule.

19 MS. SHARKO: So I have a suggestion. I have
20 a suggestion.

21 I think it is pretty clear that no one on the
22 call, except Your Honor, was prepared to talk about
23 this issue. And we have done pretty well, I have to
24 say, Leigh and Michelle and I, in meeting and
25 conferring and agreeing on things.

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1 all on the same page, there is a May 14th date, that is
2 not the date to complete everything. It just seems to
3 me the goal should be to get these six cases worked up
4 so that you can get ready to try them. We can't do
5 that unless we have a drop-dead fact discovery date,
6 corporate, third-party, friends, family, doctors,
7 whatever.

8 What do you will suggest that date is?

9 MR. TISI: May I just at least inject
10 something we haven't talked about now so at least you
11 have a full picture of where we are.

12 One of the issues -- and this was
13 contemplated early on when we -- when we co-drafted and
14 the judge approved CMO No. 11, which was the defendants
15 had asked that we attempt to coordinate with other
16 jurisdictions that are conducting discovery. And one
17 of the challenges that -- that Rich and I have had, and
18 I don't want to ever speak for Rich -- but one of the
19 challenges we've had is if we were just trying to schedule
20 depositions on our own it, would be a little bit
21 easier. One of the things that happened over time
22 was -- and we've had -- we've run into this a couple of
23 times -- because the defendants want to coordinate, or
24 conversely, if there is a deposition going on in
25 another jurisdiction that we want to cross notice, we

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1 So my suggestion is you leave us to meeting
2 and confer about the concept of a deadline for
3 identifying the discovery and then a deadline for
4 completing it, consistent with the orders to which we
5 already agreed, because we definitely don't want to
6 undo those. We made progress to get there.

7 And then when we have our next meeting, come
8 back and maybe we'll have an agreed-upon order,
9 hopefully, but if not, perhaps you can help us.

10 SPECIAL MASTER SCHNEIDER: I think that's a
11 very good idea. That's an excellent idea, because,
12 one, these six cases were just identified yesterday.
13 So in fairness, we don't know what we don't know yet.

14 And, you know, I live in the real world. I
15 don't live in a fantasy world. The orders are pretty
16 good you are going to ask Judge Wolfson for an
17 extension of time to complete -- well, maybe you are
18 going to object --

19 MS. SHARKO: No.

20 SPECIAL MASTER SCHNEIDER: -- but the
21 plaintiffs will.

22 MS. SHARKO: We are -- we are committed to
23 getting this done so we can have a trial the first
24 quarter of 2022. I think Ms. O'Dell and Ms. Parfitt
25 and I stand united.

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1 SPECIAL MASTER SCHNEIDER: Right. No, I
 2 don't -- I don't disagree with that. I don't think the
 3 back end is going to be extended at all. But the
 4 interim deadlines may have to be adjusted to
 5 accommodate the plaintiff.
 6 We are hearing from the plaintiff today that
 7 they are saying that they are not going to get
 8 everything done by May 14th.
 9 MS. O'DELL: Your Honor.
 10 SPECIAL MASTER SCHNEIDER: That's what I'm
 11 hearing from the plaintiff.
 12 MR. BERNARDO: Your Honor.
 13 MS. O'DELL: Your Honor, if I could just --
 14 if I could interject here.
 15 I mean, we are really not -- you know, what
 16 was contemplated for the order for the bellwethers is
 17 Susan and Michelle and I did agree to that order. We
 18 had no sense that for those case-specific preparations
 19 for those bellwether trials that we would need an
 20 extension at this point. Unless there is something
 21 unforeseen, another wave of COVID, something else
 22 happens, we are on track for that.
 23 What we have always envisioned is that there
 24 would be a separate parallel track for liability
 25 discovery that would not only be used for the

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1 of it.
 2 But Mr. Placitella raised what I think is a
 3 good point, and how do we deal with that? How does --
 4 how does discovery continue through the end of the year
 5 if it's relevant to the expert reports that are due in
 6 June or July?
 7 MS. O'DELL: I think -- yes, and to pick up
 8 on Chris's comments. There -- there are certain
 9 experts that would be more pertinent, too.
 10 SPECIAL MASTER SCHNEIDER: Yes. Absolutely.
 11 MS. O'DELL: And so if you have a
 12 case-specific gyn oncologist, for example, that is
 13 offering a general causation and a causation opinion,
 14 some of it might support -- further support their
 15 opinions, but it's unlikely to provide a new opinion,
 16 because they are relying on a lot of the discovery that
 17 has already been taken, as well as for the causation
 18 case.
 19 So understand Your Honor's point. I just
 20 wanted to share with you what our perspective has been
 21 in terms of preparing the cases going forward to the
 22 bellwethers.
 23 MR. TISI: Judge, I'm sorry, I didn't mean
 24 to --
 25 SPECIAL MASTER SCHNEIDER: No, go ahead,

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1 bellwethers in 2022, but would be materials that would
 2 be gathered and marshaled for a trial package that
 3 would be used in these cases when they are remanded to
 4 their home jurisdictions.
 5 And so we have never thought -- we thought
 6 they would work together. And so to be honest, I would
 7 have anticipated, and I need to talk to my colleagues,
 8 that liability discovery would be ongoing throughout
 9 the remainder of the year because it's going to be used
 10 in, you know, thousands of cases.
 11 SPECIAL MASTER SCHNEIDER: But Ms. O'Dell,
 12 but here's the problem with that, that I see. I want
 13 to get back to what Mr. Placitella said, which I agree
 14 with.
 15 Some of the ongoing fact discovery that you
 16 want to take is likely -- not all of it, of course --
 17 is likely to be relevant to the expert reports that are
 18 due by whatever the date is, June or July.
 19 So there is that conundrum of -- I mean,
 20 if -- if the plaintiffs agree that they will get their
 21 final expert reports in, that's it, we are done,
 22 finished. I don't think the defendants are going to
 23 object if you continue to take discovery.
 24 If they have an objection to the substance --
 25 in theory, they may have an objection to the substance

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1 counsel.
 2 MR. TISI: We did face this issue in the TRT
 3 litigation, Your Honor. And the way in which it was
 4 handled was, the parties can continue, and I think
 5 Judge Connolly issued an order, that the parties, there
 6 was a deadline for the parties to take liability
 7 witnesses that would be usable in one of the bellwether
 8 trials up until, I want to say it was 30 days before
 9 trial, 45 days before trial, I would have to take a
 10 check of the order.
 11 The fact of the matter is that for the
 12 liability questions, okay, it is unlikely that they
 13 will affect the expert reports. The expert reports are
 14 primarily going to be scientific and medical, okay.
 15 The depositions that we are taking primarily right now
 16 are relating to, for lack of a better term, what did
 17 you know and when did you know it? And that is
 18 not typically --
 19 SPECIAL MASTER SCHNEIDER: Okay, fair enough.
 20 MR. TISI: This is not typically going to be
 21 a question that is the subject of -- now, I'm not
 22 saying that an expert wouldn't say, look, you know, I
 23 think that such and such should have happened by such
 24 and such date and, you know, now I read the deposition
 25 of something that happened later on in the case.

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1 But for the most part, the corporate
2 liability depositions we are taking are fact witnesses,
3 much like a witness to an automobile accident case.
4 That is not typically going to be the subject of expert
5 testimony. I'm not saying it won't be.

6 So the way in which we dealt with it in the
7 TRT litigation was, Judge Connolly issued an order that
8 said, you know, no later than "X" date for this trial
9 all depositions need to be conducted by that date.

10 Now, he didn't foreclose that there might be
11 other depositions for other trials, but for that date
12 he -- that's what he did.

13 So I offer that as just a learning from
14 another piece of litigation that might be useful, for
15 whatever it worth. And it may not be worth much, but
16 it's what I throw out there.

17 MS. SHARKO: So I just -- I'm concerned
18 because it is 4:13 and we lose Mr. Bernardo at 4:30,
19 and we need him to weigh in on the defense' side. I
20 think on the plaintiffs' side, too. They like to talk
21 to him better than they like to talk to me on these
22 issues. We need him on privilege and on the
23 lawyer-deposition issues.

24 SPECIAL MASTER SCHNEIDER: Okay, let's turn
25 to that then, Ms. Sharko.

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1 anything? And then we'll discuss how to tee up the
2 issue to get it decided.

3 MS. O'DELL: Your Honor, we do have
4 challenges. We have been looking at the revised
5 privilege law. There has been a lot of activity on the
6 defense' side in terms of certain documents being
7 de-privileged.

8 And so we have been looking at that. We are
9 expecting some new material from Rich, you know,
10 shortly in terms of the outstanding challenges that are
11 going on in state court as well so we can coordinate.

12 Our discussion -- just discussion internally
13 has been that we would identify the documents that we
14 plan to challenge the privilege designation by April
15 the 9th in order to provide to Rich and others, meet
16 and confer, for those that we could not reach agreement
17 on that we would bring those challenges to Your Honor
18 for purposes of having you decide the issues.

19 SPECIAL MASTER SCHNEIDER: That's great. No
20 problem at all.

21 Question: If we are dealing with a hundred,
22 hundred and fifty documents, very easily look at every
23 single one in camera. If we are dealing with seven or
24 eight thousand, you know, I can do it easy enough, I've
25 done it before, but it will make it a little bit

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1 MS. SHARKO: Thank you.

2 SPECIAL MASTER SCHNEIDER: And then if need
3 be, we can turn back to the other issue.

4 I'm looking to you as the best way to tee up
5 this privilege issue. I think that -- I read the
6 transcript of the hearing, and I thought Judge
7 Wolfson's instructions were pretty clear.

8 February 17th I wrote down: Privilege
9 question should be raised right at the outset so
10 everyone understands what's fair game and what's not.
11 If you think somewhere down the line any of these
12 documents may come into the case or you may be
13 interested in them you have to bring your objections
14 now; and if you don't do it, they are not coming into
15 this case. Can't do it later.

16 So the instruction is, if the plaintiffs
17 think they may want to use any of these alleged
18 privileged documents at trial, they have to tee up this
19 objection now.

20 And I read the transcript, you did, too,
21 Judge Wolfson said, in effect, I don't care if some
22 judge in Missouri said they are not privileged, we are
23 going to live and die by the decisions in this case.

24 So really, I think the ball is in plaintiffs'
25 court. Do you know what you want to challenge, if

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1 harder, unless the parties can agree to put the
2 documents in categories and have a representative
3 sample of each category and the ruling as to the
4 representative sample will apply to that category.

5 Any discussion about that?

6 MR. BERNARDO: Your Honor, this is exactly
7 how we have been agreeing to do it in connection with
8 the New Jersey challenge. And I have been working well
9 with Ms. O'Dell and Ms. Parfitt, Mr. Tisi, and will
10 continue to do that to try and streamline this. I
11 think the April 9th deadline is fine.

12 I think the key here is that there are
13 challenges being made in multiple courts over the same
14 documents. And we needed to do something to ensure
15 that they are getting dealt with in some coordinated
16 manner.

17 I think Step 1 is as Ms. O'Dell suggests, for
18 us to meet and confer and come up with the list. I
19 think your suggestion, Your Honor, of categories is
20 spot on. That's how the challenges really have been
21 done in the ones in New Jersey, and we already have
22 focused on categories. And as I think that Your Honor
23 knows, several of those categories have already been
24 briefed. And we would suggest that those be the first
25 in line, so that whatever courts are looking at them,

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1 Your Honor, in conjunction with Judge Viscomi or Judge
2 Norton, however that's going to work, it get done
3 together.

4 So I'm happy to work with Ms. O'Dell to
5 narrow that. Also agree that trying to refine it to a
6 representative set makes much more sense. I think some
7 of these are legal issues that could -- I would say,
8 uphold the privilege of large swaths of documents.
9 Ms. O'Dell may have the opposite view. In any event, I
10 think we are all on board with that.

11 And if I may, since there actually is a
12 transition here from the privilege issue to the
13 deposition issue, if I could just segue into that, Your
14 Honor, simply because that has some time sensitivity
15 associated with it in light of --

16 SPECIAL MASTER SCHNEIDER: Can I ask one
17 question, though, before we get to that, Mr. Bernardo.

18 The question would be to Ms. O'Dell.

19 April 9th, whatever you present to the court,
20 let's say there is a hundred and fifty documents, two
21 hundred documents, whatever, either that's the whole
22 set or that's the representative sample.

23 Do you anticipate on April 9 you are just
24 going to send me a one-page or a two-page letter saying
25 these are the documents? Or on April 9th am I going to

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1 decide the issue?

2 MR. BERNARDO: Your Honor, I think that
3 works. What I would like to build in, if we may, is an
4 opportunity, if you are available after we get their
5 list on April 9th, to confer with Your Honor if we feel
6 as if however this is going to get adjudicated doesn't
7 really make sense in light of the other issues that are
8 being briefed. I agree with the schedule.

9 SPECIAL MASTER SCHNEIDER: No problem.

10 MR. BERNARDO: With that minor edit, once I
11 get Ms. O'Dell's list -- I'll even after this call set
12 up a date with her to discuss their list. Because I am
13 sure we can do that in short order.

14 And then if based on the list or the process
15 we have issues, we'll reach out to Your Honor to raise
16 them. Because I think there may be some logistical
17 procedural issues that we will want to discuss with you
18 before we put it in writing.

19 SPECIAL MASTER SCHNEIDER: Okay. How about
20 this, Mr. Bernardo -- I don't disagree with anything
21 you said. April 9 you will get the list. You will
22 meet and confer. To the extent you can't agree -- this
23 is the default setting: By April 23rd, defendant will
24 file its letter brief with supporting affidavit,
25 affidavits.

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1 get the documents to review in camera with the
2 appropriate supporting affidavit to support the
3 privilege or work product claim?

4 MS. O'DELL: Our suggestion, Your Honor, was
5 that on April 9th we will give the final list to Rich
6 of those documents that we are going to challenge.
7 Thereafter, the parties would meet and confer. We
8 would narrow down to those areas where we --
9 disagreement remains. And then we would submit that to
10 Your Honor with briefing on why plaintiffs believe that
11 the documents are not privileged.

12 So that would occur sometime -- and
13 depending, you know, on our meet and confer, sometime
14 at the end of April.

15 SPECIAL MASTER SCHNEIDER: Well, let's get a
16 date for that now.

17 Let's get a definite -- let's get a date.

18 If April 9 defendant is going to get the
19 list, you are going to meet and confer, hopefully the
20 sky will fall in and you will agree on everything, but
21 that's not going to happen.

22 So can we say on April 23rd, defendant, you
23 have the burden of proof, you are going to submit your
24 letter brief, supporting affidavits. And a week after
25 that, plaintiff, you will respond, and then we'll

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1 Plaintiff responds by April 30th.

2 If you think it will help advance the ball to
3 have a phone call between the 9th and the 23rd,
4 perfectly fine, and we can change this procedure. So
5 let's just have a default procedure so at least we have
6 some sort of plan going forward.

7 MR. BERNARDO: That makes sense to the
8 defense.

9 SPECIAL MASTER SCHNEIDER: Okay. Let's segue
10 to the deposition issue, unless we -- Mr. Placitella?

11 MR. PLACITELLA: Yeah, I would just ask the
12 Court, this is a pretty important issue, and if we can
13 have a few more days other than a week to respond, that
14 would be appreciated.

15 SPECIAL MASTER SCHNEIDER: Okay. That
16 reminds me of a question I wanted to ask Ms. O'Dell.

17 If this issue has been briefed already, can I
18 see those -- I don't want to see the decision, but can
19 I see the briefs that have already been filed on these
20 documents? So I may get to a decision as quickly as
21 possible?

22 MR. PLACITELLA: Well, they have been briefed
23 by the parties in a state mesothelioma case. And I
24 don't even know that all the people on the Plaintiffs'
25 Steering Committee have seen the briefs. I've seen

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1 them. But the issues are not the same.
 2 SPECIAL MASTER SCHNEIDER: Okay.
 3 MR. PLACITELLA: Some are the same. Some,
 4 you know, they overlap but, you know, we still think
 5 it's really important to fully brief the issue for you.
 6 SPECIAL MASTER SCHNEIDER: No problem.
 7 Mr. Placitella, I'm familiar with the issues.
 8 I don't need to know the boilerplate --
 9 MR. PLACITELLA: I understand.
 10 SPECIAL MASTER SCHNEIDER: -- about the
 11 attorney-client privilege.
 12 Your briefs should just get to the crux of
 13 it. That's what I'm really interested in.
 14 How about May 5th; is that okay? That will
 15 give you the weekend and a few extra days?
 16 MS. O'DELL: Your Honor, can I ask our
 17 colleague, Dan Lapinski, who is going to probably be
 18 taking some of the laboring ore on this. I hate to
 19 agree to stuff while his on the phone. He can kick me
 20 under the table figuratively.
 21 So, Dan, does this work or do you need...
 22 MR. LAPINSKI: I like the -- I like the
 23 August 27th deadline that you were talking about
 24 earlier, but...
 25 Yes, the 5th should be fine.

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1 MS. O'DELL: Thank you.
 2 SPECIAL MASTER SCHNEIDER: Okay. Again,
 3 without prejudice, Mr. Bernardo, to have the call that
 4 we talked about.
 5 Let me just say this, you've done this a
 6 million times before. I've done this a million times
 7 before. And I recently wrote on this in Valsartan.
 8 When you send your supporting affidavits in
 9 support of the privilege claim, I don't want to see
 10 sort of a generic, it's privileged, pro forma
 11 affidavit, you know. You know what is needed to be --
 12 to support a claim.
 13 So I would -- would not expect the caliber of
 14 the lawyers in this case that we are going to get what
 15 we typically get, the pro forma affidavit, it's
 16 privileged, work product, I anticipated litigation.
 17 But you know what I'm talking about, right?
 18 MR. BERNARDO: I do, Your Honor. And I will
 19 assure you what you will get will not be pro forma, it
 20 will be far from it.
 21 We have really done, I think, a good job of
 22 trying to cut though as many of these claims, and as
 23 Ms. O'Dell alluded to, downgrade documents where there
 24 is no risk of waiver, and we think they might fall into
 25 gray areas.

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1 So what we, I think, would be presenting to
 2 Your Honor would be things for which we think there is
 3 a legitimate basis for privilege and the supporting
 4 materials will not be pro forma.
 5 SPECIAL MASTER SCHNEIDER: I know Ms. Sharko
 6 said it's only one percent of the production. But one
 7 percent of multi-millions is a lot of documents, right,
 8 Ms. Sharko?
 9 MR. BERNARDO: I'm sure given how far we have
 10 gone in downgrading documents, that Ms. O'Dell's
 11 challenges will be very targeted as to a much smaller
 12 number.
 13 SPECIAL MASTER SCHNEIDER: I don't have any
 14 doubt whatsoever.
 15 Let's segue to the deposition issue you
 16 wanted.
 17 It seems to me there's -- it seems to me
 18 there's two categories to deal with. There is the
 19 three people that are in your letter and then the
 20 president. I don't really see them as the same issue.
 21 MR. BERNARDO: I agree. And I'll just say,
 22 again, we can note the time and date for the record. I
 23 agree with what Mr. Tisi said earlier in the call,
 24 where he and I have been working well together to try
 25 and deal with the depositions that have been requested

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1 in that letter. Other depositions we have agreed on.
 2 Many of them we are coordinating on dates.
 3 There is really one in particular that we
 4 just wanted to raise with Your Honor, because it raises
 5 significant issues that we believe Your Honor ought to
 6 be addressing.
 7 SPECIAL MASTER SCHNEIDER: This is
 8 Mr. O'Shaughnessy?
 9 MR. BERNARDO: This is Mr. O'Shaughnessy, is
 10 a former assistant general counsel.
 11 SPECIAL MASTER SCHNEIDER: Right.
 12 The plaintiff says the judge in Missouri
 13 already ordered that deposition to go forward. And
 14 if -- are you -- plaintiff, I take it you are not
 15 seeking to take the deposition in this case, are you?
 16 MR. TISI: Yeah, Your Honor, let me -- let
 17 me -- oh, I'm sorry. Go ahead, Leigh.
 18 MS. O'DELL: No, no.
 19 MR. TISI: No, no, no. Go ahead. Go ahead.
 20 I'm sorry, I thought this was my issue, but I...
 21 MS. O'DELL: It is -- it is your issue. I
 22 can't keep my mouth shut, Chris, I'm sorry.
 23 MR. BERNARDO: I will be happy to take it,
 24 but I don't think...
 25 MS. PARFITT: Thank you, Rich, but we

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1 appreciate it.

2 MR. BERNARDO: I was just volunteering.

3 MR. TISI: So -- so Judge, this falls within
4 the category of, you know, the fact that -- let me just
5 back up and say that over -- I want to say about four
6 or five thousand non-privileged documents have been
7 produced in this case that have Mr. O'Shaughnessy's
8 name on it. So clearly he has some factual information
9 that is the not privileged based on -- based at least
10 on --

11 SPECIAL MASTER SCHNEIDER: Could I -- I know
12 Mr. Bernardo has to leave. So let's get to the crux of
13 this question.

14 MR. TISI: All right. So --

15 SPECIAL MASTER SCHNEIDER: Is the deposition
16 of Mr. O'Shaughnessy cross noticed in this case?

17 MR. TISI: It will be.

18 SPECIAL MASTER SCHNEIDER: Okay. Then the
19 defendants have standing to move to quash it for use in
20 this case, don't they?

21 MR. TISI: I think that they -- I think that
22 they do.

23 What they don't have, which is what Mr.
24 Bernardo and I talked about yesterday, is they are
25 seeking to have the question of whether or not this

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1 SPECIAL MASTER SCHNEIDER: What can we do --
2 what can we do about the Missouri state court order?

3 MR. BERNARDO: It's very simple. And we
4 accomplished this in the state court proceeding as
5 well.

6 I mean, the starting point, Your Honor, is we
7 believe, given this deposition, the issue of whether it
8 goes forward ought to be decided by this court. And if
9 it does go forward -- and I'll explain how --

10 SPECIAL MASTER SCHNEIDER: But the Missouri
11 court already decided it.

12 MR. BERNARDO: But that -- Your Honor, I
13 think -- I think there is an important point that's
14 being missed here. This is part of the uniform
15 subpoena act, et cetera. And the only thing that the
16 Missouri court did was authorize the issuance of a
17 subpoena, which was issued in a Pennsylvania court that
18 has no connection whatsoever to this litigation.

19 So the issue of whether the deposition will
20 go forward or not is going to be decided, at the
21 moment, by a state court judge randomly assigned. And
22 pursuant to that statute, the deposition and objections
23 to it and privilege rulings that will be impacting this
24 court would be ruled by a randomly-assigned judge in
25 Pennsylvania.

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1 deposition goes in the first place, removed from a
2 state court judge, which we don't think is appropriate.

3 SPECIAL MASTER SCHNEIDER: So how can I do
4 that? How can I do that?

5 MR. TISI: Your Honor -- Your Honor, I don't
6 think you can. I don't think you can.

7 So really where we are here, Judge, if I can
8 frame the issue is, we have a -- we have a Missouri
9 judge who has ordered the deposition. He has been
10 served in this case. The judge has already concluded
11 that he has relevant information to provide.

12 SPECIAL MASTER SCHNEIDER: Okay.

13 MR. TISI: The question is whether or not
14 there is a cross notice.

15 Now, he was just served yesterday, so there
16 is no cross notice yet, but there will be. So the
17 question is --

18 SPECIAL MASTER SCHNEIDER: Okay. So then we
19 can tee up the objection in this case.

20 MR. TISI: For the cross notice. Correct.

21 SPECIAL MASTER SCHNEIDER: Now, Mr. Bernardo,
22 do you think we have the power to tell the Missouri
23 state judge that he or she has to -- you know what I'm
24 trying to say.

25 MR. BERNARDO: Your Honor, let me --

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1 It is our position that this court ought to
2 make those decisions. And there is a very simple and
3 elegant way in which that can be accomplished. And
4 this is exactly what was done in New Jersey state
5 proceeding, which was the potential deponent,
6 Mr. O'Shaughnessy, has agreed to accept service in
7 New Jersey of a New Jersey subpoena, properly executed,
8 and will not contest the jurisdiction of the court to
9 rule on, one, whether the deposition goes forward, and
10 if it does; two, to have it take place in New Jersey.

11 This is how we did it in the state
12 mesothelioma case, for the very important reason that
13 having -- in that instance, I believe it was a criminal
14 judge in Bucks County who was going to be calling balls
15 and strikes if the deposition were going to go forward
16 on privilege issues.

17 And Your Honor is already going to be
18 addressing these privilege issues in connection with
19 the documents.

20 So it's defendants' position that it just
21 makes sense for this court to be adjudicating this, not
22 for a randomly-assigned judge in Pennsylvania.

23 And as I just offered, I think there is an
24 easy way for that to be accomplished. And to satisfy
25 everybody and do this -- if it's going -- if we lose on

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1 our motion to quash to have it proceed in this court to
2 be coordinated for all of the other ovarian cancer
3 actions rather than to have it, you know, be done again
4 in the state court.

5 SPECIAL MASTER SCHNEIDER: The only thing,
6 when you say there is an easy way to do it, Mr.
7 Bernardo, the only easy way that I can think of is if
8 the parties consent to have this court decide the
9 issue. What is the easy -- easy solution that you are
10 referring to?

11 MR. BERNARDO: Is simply what was done in
12 New Jersey. Because the parties can't, as a matter of
13 jurisdiction, consent to have it adjudicated here.
14 Because if it's issued in Pennsylvania pursuant to
15 their laws, the deposition takes place in Pennsylvania
16 pursuant to Pennsylvania laws. So it would have to be
17 done pursuant to a New Jersey subpoena.

18 I mean, we are willing to consent to that,
19 and we are willing, through the parties' lawyer who we
20 coordinated with, to have the witness consent to have
21 this court adjudicate whether the deposition goes
22 forward; and if it does, to adjudicate the objections.

23 We can't just do it through -- we can't just
24 do it through consent as far as we read the law, Your
25 Honor, just because of the way the Uniform Deposition

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1 happened. No, that's not the way it worked, Chris.

2 MR. TISI: Chris, let me -- let me finish
3 what I'm saying here, because...

4 The question of -- if the judge in
5 Pennsylvania agrees that the subpoena goes forward --
6 Judge Burlison in Missouri has already decided that the
7 deposition goes forward. It doesn't come to Your
8 Honor. It doesn't come to Judge Wolfson in any event.
9 It would go to that judge who ordered the deposition in
10 the first place.

11 The third point I would make that is really
12 important in this case is, this wasn't just an order
13 that was issued pro forma under the -- under the Act.
14 J&J went to Judge Burlison, as best as I know, I wasn't
15 part of the proceedings, asked for reconsideration.
16 The judge actually issued an order specifically
17 considering the question of whether or not
18 Mr. O'Shaughnessy should -- his deposition should be
19 taken; and he affirmatively on reconsideration decided
20 that it should.

21 So the question about where this goes, it
22 goes back to Judge Burlison. In New Jersey it would go
23 to Judge Viscomi, and that's why procedurally it
24 happened that way.

25 If I'm incorrect, Chris, please feel free.

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1 Subpoena Act confers jurisdiction on Pennsylvania.

2 MR. TISI: First of all, Judge, let me be
3 clear. I'm pretty sure -- and I could be wrong about
4 this, but I'm pretty sure that this is not being done
5 pursuant to the Uniform Deposition Act. I don't think
6 that Missouri is part of that.

7 But putting that issue aside for the moment,
8 we can deal with that question, there is a big material
9 difference. And even Rich and I spent some time with
10 this yesterday. There is a big material difference
11 between what is going on in the state court in New
12 Jersey with Judge Viscomi and with what is going on
13 here.

14 In that case, okay, you had a New Jersey
15 mesothelioma case, where the New Jersey lawyers went to
16 Pennsylvania to serve Mr. O'Shaughnessy with a dep --
17 with a subpoena.

18 The question of whether or not that
19 deposition goes forward ultimately is decided by the
20 court in New Jersey. You serve a subpoena, the
21 Pennsylvania -- the Pennsylvania judge puts a stamp on
22 it or doesn't. Mr. O'Shaughnessy is served. Motion to
23 quash is filed in New Jersey and Judge Viscomi decides
24 the question. Here it's a very different --

25 MR. PLACITELLA: That's not actually what

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1 MR. PLACITELLA: Well, there's one --

2 SPECIAL MASTER SCHNEIDER: Do you have a date
3 for Mr. O'Shaughnessy's deposition?

4 MR. TISI: It's -- right now -- he was served
5 yesterday in the Missouri matter, as best as I know.

6 SPECIAL MASTER SCHNEIDER: So there is no
7 date certain now when he's going to be deposed?

8 MR. TISI: No. I anticipate that J&J will
9 file, J&J or Mr. O'Shaughnessy, one and the same, will
10 be filing a motion to quash in Pennsylvania.

11 If that should be -- if that should be
12 granted, then we are in a position where the only place
13 it could occur is here. If it should be denied, the
14 deposition goes forward and has to be set in the
15 Forrest case.

16 And then sole question for Your Honor is
17 whether or not it gets cross noticed here.

18 MR. PLACITELLA: So Your Honor, if I may on
19 procedure, because I've been in -- knowledge about
20 both, but not in both -- in either case, actually, but
21 I've been present.

22 In New Jersey the subpoena was issued to
23 Mr. O'Shaughnessy originally in Pennsylvania.

24 A motion to quash was filed in Pennsylvania.
25 It was actually briefed. And then the parties in New

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1 Jersey agreed to have Judge Viscomi ultimately rule on
2 a subpoena that was subsequently issued in New Jersey
3 and took it outside the jurisdiction of Pennsylvania.
4 What we have, from what I understand, in
5 Missouri, is you have a circumstance where whether it
6 should go forward was fought in Missouri. The subpoena
7 is then subsequently served in Pennsylvania. I
8 anticipate J&J will file their motion to quash in
9 Pennsylvania. Will be fought out there. And should
10 the motion to quash not be successful, it was my
11 understanding that the intent of the court in Missouri
12 was to preside over that deposition and make rulings as
13 that deposition went forward.
14 MR. BERMAN: If I can make a practical
15 suggestion here? Since -- I will start by saying, I'm
16 not a Pennsylvania lawyer, Your Honor. I have spoken
17 to enough Pennsylvania lawyers in connection with this
18 last subpoena to feel as if I at least understand this
19 process.
20 What I would suggest is maybe we submit a
21 very short letter brief in the next couple of days.
22 We'll make our -- Mr. O'Shaughnessy, he has his own
23 separate counsel. And, obviously, J&J would be moving
24 on behalf of J&J.
25 Happy to explain why what Mr. Placitella is

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1 think there is an easy way of procedurally having this
2 appear before your court -- before Your Honor.
3 And if plaintiffs disagree that it should be
4 before Your Honor, we can talk about that separately,
5 but I think it makes sense to be before Your Honor.
6 SPECIAL MASTER SCHNEIDER: There doesn't seem
7 to be a dispute, and there can't be, that if the
8 deposition is cross noticed in the MDL, that this court
9 has jurisdiction to deal with the question of whether
10 or not the MDL deposition of O'Shaughnessy should be
11 quashed.
12 The stickler is whether this court has
13 jurisdiction to upset somehow the decision that has
14 already been made by the Missouri court, right?
15 MR. TISI: Correct. And to compare the
16 analogy, Rich's analogy further, I think Judge Wolfson
17 understood that when she was dealing with the
18 arguments.
19 She understood, as best as I understand, that
20 a state court judge could decide that a particular
21 document is unprivileged, it is not privileged
22 according to Missouri law, and she also understood that
23 Your Honor may make a different decision.
24 Her remedy was it doesn't get used in this
25 court.

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1 saying, at least in our understanding of the law, is
2 incorrect. In other words, that if the subpoena is
3 issued in Pennsylvania, that the Pennsylvania court
4 would be the one to decide whether or not it goes
5 forward. And once that is decided, that it would get
6 adjudicated in Pennsylvania. And we think it ought to
7 be adjudicated before Your Honor.
8 If we are wrong about that -- and our intent
9 simply is -- and I wouldn't understand why plaintiffs
10 would object to that -- is that if it goes forward,
11 Your Honor is the one to decide issues with respect to
12 the scope of privilege of that deposition, because
13 there is no question but that that deposition, if it
14 goes forward, would be used by the people whom you are
15 looking at on this phone call on the plaintiffs' side
16 in this case.
17 And apropos of Judge Wolfson's admonition of
18 privilege issues and how they get decided, they can't
19 unlearn what they learn at a deposition because they
20 are taking it in another case.
21 So we just -- if it's going to go forward,
22 it's obviously an important deposition, and we think it
23 really ought to get decided here.
24 So happy to submit a very short explanation
25 of why we think the procedure is what it is and why we

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1 SPECIAL MASTER SCHNEIDER: But why don't we
2 do this, Mr. Tisi, why don't we do this.
3 Why don't we give the plaintiffs a deadline,
4 if they are going to cross notice, this is the
5 drop-dead date. If you're going to do it, do it by
6 this date; and if you don't do it, you can't take the
7 deposition in connection with this case.
8 Presumably you will cross notice. J&J files
9 its request to quash. Plaintiff responds. I'll decide
10 in the first instance the MDL issue.
11 I don't see how I have jurisdiction over the
12 Missouri court.
13 MR. TISI: Respectfully, I think you are
14 probably right in that.
15 SPECIAL MASTER SCHNEIDER: So here's a
16 question for you. I don't know the answer to this.
17 Suppose, hypothetically, just purely hypothetically,
18 the deposition is just taken with a caption from
19 Missouri. You get to trial in the six cases. Can that
20 deposition from Missouri be used in this case?
21 MR. TISI: We think -- we think that it
22 should be. And, you know, obviously there are
23 questions there. But that's ultimately a decision that
24 gets taken down the road. I mean...
25 SPECIAL MASTER SCHNEIDER: But isn't that

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1 getting through the back door what you can get through
2 the front door?

3 MR. BERNARDO: I think Your Honor hit the
4 nail on the head. That's exactly what's happening. It
5 is going through the back door.

6 It goes back to Judge Wolfson's comment. And
7 I think she specifically raised the challenge created
8 by depositions. And to be clear, I think, if this
9 deposition were to go forward, I would expect that
10 after the witness were to state his name for the
11 record, the response to the first question would
12 probably be a instruction not to answer on the grounds
13 of attorney-client privilege. That's going to have to
14 get adjudicated, because he's the in-house counsel and
15 his responsibility was litigation.

16 SPECIAL MASTER SCHNEIDER: Mr. Bernardo, in
17 view of the direction that Judge Wolfson already gave,
18 purely hypothetical, cross notice. The deposition of
19 O'Shaughnessy is quashed in the MDL. The deposition is
20 taken in Missouri.

21 Do you think Judge Wolfson is going to let
22 that deposition from Missouri come into this case if
23 this court, if this court, me, or the magistrate or
24 Judge Wolfson, decided that the deposition of
25 O'Shaughnessy should be quashed?

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1 with it.

2 To me, I think that we are never going to get
3 there, frankly, because we are going to cross notice
4 it. If it -- if the judge in Pennsylvania allows it to
5 go forward and you are going to deal with it; or if the
6 judge in Pennsylvania doesn't allow it to go forward,
7 then it will be before you on a direct notice. So...

8 SPECIAL MASTER SCHNEIDER: Mr. Placitella,
9 why do we have to wait for the Pennsylvania court to
10 decide? Why can't I just say, if you are going to
11 cross notice it, do it within a week. We'll tee up the
12 issue in this MDL and get it decided. Why do we have
13 to wait for the Pennsylvania court to say whether or
14 not --

15 MR. PLACITELLA: Why am I going to cross
16 notice a deposition that is not going forward?

17 SPECIAL MASTER SCHNEIDER: Right now it's
18 go -- but until it's -- until it's quashed it's --

19 MR. PLACITELLA: Until they quash the
20 deposition. They've said it in Pennsylvania. From
21 their perspective it should not go forward.

22 So how can you tee up whether it should go
23 forward here if they are fighting it in Pennsylvania?
24 If in Pennsylvania they win, the issue is moot.

25 SPECIAL MASTER SCHNEIDER: I respectfully

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1 MR. PLACITELLA: Well, can I respond to that
2 actually?

3 So there is -- there is a misstep here, I
4 think. And that is the Pennsylvania court, they are
5 going to move to quash. If the Pennsylvania court
6 quashes the dep in Pennsylvania, then there is nothing
7 to cross notice, right?

8 SPECIAL MASTER SCHNEIDER: Right. That's
9 exactly right. That's exactly right.

10 MR. PLACITELLA: So it's not yet ripe.

11 Then we come to the point do we want to take
12 the deposition or wait. The plaintiffs want to take
13 the deposition in the MDL. It would be a separate
14 notice which they say Mr. O'Shaughnessy will accept.
15 And at that point you would make a determination.

16 The one thing I probably disagree with on a
17 theoretical basis, a deposition taken in another state,
18 even given Judge Wolfson's statements, does become like
19 a document. If information in that deposition turns
20 out to be privileged, well then it won't come in here.
21 That will be a -- you would look -- you would rule on
22 that like you would rule on any other document.

23 But if there is information in that
24 deposition that is not privileged, well then the court
25 can confront it at that time about how you want to deal

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1 disagree.

2 I don't we need to wait -- do we know when
3 the Pennsylvania court is going to decide it?

4 MR. BERNARDO: The motion hasn't even been
5 filed, Your Honor. And given our experience in the
6 last iteration of this, my guess is it would probably
7 be a number of weeks before there is any decision.

8 SPECIAL MASTER SCHNEIDER: My goal is to get
9 you to the finish line. So let's tee up the issue
10 sooner rather than later.

11 MR. BERNARDO: Well, and Your Honor, but this
12 is -- this is exactly what we were proposing. We just
13 were suggesting that the easy way to do it is to
14 withdraw that subpoena. Serve it. Have it occur at
15 the MDL and then the deposition happens and it get
16 coordinated.

17 I'm not sure why the resistance to having
18 Your Honor deal with it --

19 MR. TISI: Okay. Let me be -- let me be
20 clear -- let me be clear, Judge, if I can say this.

21 The plaintiffs in the Missouri case have
22 every right to pursue the discovery that they feel they
23 need to have for those cases.

24 For Mr. Bernardo to assume that we have the
25 same interest, that they are exactly a co-existing, is

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1 very presumptuous. There are 20,000 -- 25,000 women
2 involved in this litigation.

3 So what happens is, what is done in that
4 case -- and I think you had it exactly right -- what is
5 done in that case, that judge will rule on -- that
6 judge already ruled that it goes forward, assuming the
7 Pennsylvania court agrees. He is then going to have to
8 decide -- he has appointed a special master who will
9 preside over that deposition and the rulings on
10 privilege as it goes forward.

11 Ultimately, that judge will decide what comes
12 into his courtroom.

13 If we have a circumstance where we get --
14 where we get -- where it's cross noticed, Your Honor
15 and Judge Wolfson will have the same responsibility.

16 SPECIAL MASTER SCHNEIDER: Right, right.

17 MR. TISI: And the reason why it's not
18 necessarily -- the reason why it is not necessarily --
19 we need to do it on a fast track here is for two
20 reasons: No. 1, there are -- this isn't a situation
21 where the plaintiffs, as best as I know -- because I
22 have looked at the documents that have been produced.
23 We have -- start to take the deposition of Mr. Bernardo
24 where we have no documents. They have already produced
25 in this case approximately fifteen hundred documents

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1 SPECIAL MASTER SCHNEIDER: Let's -- let's get
2 it teed up and decided. That will -- that will give
3 us -- I mean, is the objection to O'Shaughnessy, Mr.
4 Bernardo, is it, one, all of what he has to say is
5 privileged; two, it's irrelevant; or three,
6 proportionality under Rule 26?

7 MR. BERNARDO: You generally have it. It is
8 a little bit more nuance than that, but I think you hit
9 the primary points, yes.

10 SPECIAL MASTER SCHNEIDER: Okay, it's all
11 three. Okay.

12 MR. BERNARDO: And I think your suggestion is
13 appropriate. And I think we'll proceed to file papers
14 and so has counsel in Pennsylvania.

15 By we may, after we further talk, and I'll
16 talk to Mr. Tisi, we may come back to you if there's
17 any procedural obstacles to achieving that way in light
18 of like you told us.

19 I was just trying to propose what I thought
20 was a simple solution to accomplish the very same
21 thing, but we are fine with Your Honor's suggestion.

22 SPECIAL MASTER SCHNEIDER: If the parties
23 agree on a procedure, I'm all for it. I'm happy. But
24 I think it's a little uphill battle for you to say --
25 my instinct is, for you to say to plaintiffs -- they

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1 from Mr. O'Shaughnessy, substantive documents, okay,
2 where -- where he is -- even they agree, that there is
3 no privilege for those documents, okay.

4 So for those -- even if --

5 SPECIAL MASTER SCHNEIDER: Yeah, but doesn't
6 mean -- one, it doesn't mean it's relevant and it
7 doesn't mean it's proportional.

8 MR. TISI: Right. But relevant -- relevancy
9 gets decided obviously down the road.

10 The second issue is, we already discussed
11 with Your Honor a process to tee up privileged
12 questions to Your Honor which will presumably, I can
13 guarantee you, will involve documents where
14 Mr. O'Shaughnessy is actually --

15 SPECIAL MASTER SCHNEIDER: Here's my
16 suggestion. Here's my suggestion.

17 If plaintiffs are going to cross notice
18 O'Shaughnessy in this case, do it by April 9.
19 Defendants file their objection by April 23rd. And
20 plaintiffs respond by May 5th. Same schedule as the
21 privilege documents, right?

22 This way we will tee up -- I don't think we
23 have to wait for the Pennsylvania court to rule to tee
24 up the issue in this MDL.

25 MR. TISI: Okay.

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1 already have an order from the court in Missouri that
2 says they can take this deposition. You are asking the
3 plaintiffs to say, put that aside and let's redo the
4 issue in the case. That's a heavy lift.

5 MR. BERNARDO: Yeah, I'm not sure I agree
6 it's exactly that, but I take your point, Your Honor.

7 But I think the way Your Honor suggested
8 proceeding can work. We'll take a look and talk to
9 Pennsylvania lawyers and figure out if it raises any
10 issues with respect to that particular subpoena. And
11 if it does, we can come and revisit with Your Honor.

12 SPECIAL MASTER SCHNEIDER: Mr. Placitella, is
13 this that same issue of O'Shaughnessy's dep before
14 Judge Viscomi?

15 MR. PLACITELLA: Yes.

16 The issue -- the issue is before Judge
17 Viscomi. But right now I think they have, if I recall,
18 somebody told me it was April 15th or something that
19 they have briefs due.

20 But yes, it is. The issues there are
21 probably more narrow, because that focuses, you know,
22 that is about mesothelioma and asbestos. Here the
23 issues are broader. They do overlap for sure.

24 But, you know, because of the issues here,
25 asbestos is not the only issue. And there is certainly

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1 overlap.

2 The Court should be aware -- the Court should
3 be aware that I was on the phone, and Johnson & Johnson
4 asked Judge Viscomi to, you know, coordinate this with
5 the federal court or Missouri, and Judge Viscomi said,
6 no, these are mesothelioma cases. They are here. I'm
7 going to deal with it, and I'm going to move forward on
8 my docket and my timeline.

9 SPECIAL MASTER SCHNEIDER: Do we have to deal
10 with the -- Ms. Sharko had mentioned in her letter,
11 Mr. McKeegan and Ms. Goodrich, that's one issue. And
12 then I consider this a separate issue, the Mr. Gorski
13 issue.

14 MR. BERNARDO: So Your Honor, I'll address
15 those. The McKeegan and Goodrich issues are not yet
16 ripe. I think they are going to be the same type of
17 issues we are talking about here. But I think if we
18 establish something with respect to Mr. O'Shaughnessy,
19 that will probably address those.

20 With respect to the Gorski issue that is
21 something that I think we would like to discuss with
22 Your Honor at a subsequent discussion. We really
23 wanted to put it on the table because it is a
24 deposition that we see getting increasingly asked for
25 in both ovarian and mesothelioma cases. And we just

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1 MR. BERNARDO: Again, Your Honor, I think
2 this is an issue we can discuss it more. And it was
3 really to bring it to your attention as something that
4 is on the radar.

5 SPECIAL MASTER SCHNEIDER: If that's not
6 ripe, than that's fine. No problem.

7 MR. BERNARDO: And I apologize. I'm probably
8 at very close risk in losing my appointment. So I
9 wanted to be sure I addressed this. So I'm going to --
10 to leave.

11 Thank you, Your Honor.

12 SPECIAL MASTER SCHNEIDER: Okay. I have a
13 suggestion in terms of scheduling. We have, according
14 to the schedule, the next call with Judge Wolfson, I
15 think, is on May 15th.

16 Do I have that right?

17 MS. PARFITT: It's May the 12th, Your Honor.

18 MS. SHARKO: May 12th.

19 SPECIAL MASTER SCHNEIDER: May 12th, okay.

20 MS. PARFITT: It's at 4 o'clock.

21 SPECIAL MASTER SCHNEIDER: So why don't we
22 put another call with me at 4 o'clock. And we'll -- if
23 need be, we will have oral argument on those
24 applications that date. All right?

25 MS. PARFITT: Thank you, Your Honor.

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1 want to achieve some level of coordinate considering --
2 I'm not sure there is an apex that's any more apex than
3 the CEO of a company like that.

4 And so we just wanted to put it in there
5 really to put that on Your Honor's radar, if you will.

6 SPECIAL MASTER SCHNEIDER: Are the plaintiffs
7 going to notice Gorski in this case?

8 MR. TISI: I don't even -- honestly, Judge,
9 and other people on this call may know other than
10 myself. I don't even know who requested Mr. Gorski's
11 deposition.

12 But pursuant to CMO No. 11, you know, we
13 would -- if it was an ovarian cancer case, we would try
14 to coordinate, yeah, we would.

15 But I don't -- I don't know anything -- until
16 I got Ms. Sharko's letter yesterday, I don't think -- I
17 know I spoke to Ms. Parfitt and Ms. O'Dell this
18 morning, none of us knew anything about a request for
19 Mr. Gorski, and I spoke to Rich Bernardo yesterday and
20 it didn't come up. So I don't know anything about it.

21 MR. PLACITELLA: Yeah, the one thing I would
22 say in terms of apex, they are all apex. In the last
23 case I tried, Mr. Gorski took the witness stand and the
24 issue went all the way to the New Jersey Supreme Court,
25 and he was forced to do testify.

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1 MS. SHARKO: Okay.

2 SPECIAL MASTER SCHNEIDER: The other thought
3 I had was -- and I appreciate your input on that.

4 Going back to the beginning of this call, I
5 think it's important that you straighten out the
6 schedule, because I think that's something Judge
7 Wolfson would want to straighten out, too, this issue
8 about whether depositions are going to continue after
9 the current fact date and expert reports and this and
10 that.

11 Hopefully, you will come to some sort of
12 agreement and understanding on that.

13 Why don't we tentatively schedule a call in,
14 say, like two weeks to talk about the schedule, because
15 if you are going to propose a change to Judge Wolfson,
16 I can't decide it, but you could -- we could discuss it
17 on the phone and then you can send your letter to Judge
18 Wolfson, say we discussed it, blah, blah, blah. But I
19 would rather get that scheduling issue firmed up before
20 May 15th, right? It's in your best interest.

21 MS. O'DELL: Yes.

22 SPECIAL MASTER SCHNEIDER: I agree with you
23 wholeheartedly, you ought to keep the date for the
24 bellwether trials in early or the spring of 2022.

25 I think it's feasible to adjust some of the

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1 other deadlines and still keep that bellwether trial.
2 MS. SHARKO: We really -- we really do not
3 want to adjust the schedule that we have. But I think
4 instead, it sounds like Your Honor is suggesting that
5 we consider putting some additional deadlines in there.
6 So we'll meet and confer and...

7 SPECIAL MASTER SCHNEIDER: I think if
8 you're -- there is a consensus on your part, then
9 that's fine. That you were just talking about friends
10 and family and doctors for the current date. But you
11 know there's going to be other issues, third parties
12 potentially, some either individual or corporate
13 additional J&J deps. So you need a time frame for
14 that, if those are going to go forward. You ought to
15 discuss what that ought to be. Let's firm up the
16 schedule, so there is no misunderstanding.

17 You know, my goal is to keep you on that
18 schedule to try that case in early -- as early as
19 possible in 2022. And I think that's Judge Wolfson's
20 goal, too.

21 MS. SHARKO: How about if we report back to
22 Your Honor on April 22nd?

23 SPECIAL MASTER SCHNEIDER: Let me look at my
24 calendar. April 22nd is...

25 MS. SHARKO: A Thursday.

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1 mountain time, so...

2 SPECIAL MASTER SCHNEIDER: How about
3 4 o'clock, Ms. Parfitt?

4 MR. TISI: Yeah, I -- so 4 o'clock would be
5 fine.

6 MS. PARFITT: Perfectly fine.

7 MR. TISI: But that might be too -- yes.

8 MR. LAPINSKI: That's April 22nd?

9 SPECIAL MASTER SCHNEIDER: Tentatively, in
10 pencil, Mr. Lapinski. We may not need that call.

11 MR. LAPINSKI: And that's the call just to
12 adjust -- just to adjust the scheduling, if necessary,
13 correct?

14 SPECIAL MASTER SCHNEIDER: Exactly.

15 MR. LAPINSKI: A question that I have on
16 that, Your Honor, is for the purposes of just these
17 six -- these six bellwether cases, why wouldn't we make
18 a discovery end date December 3rd that aligns with the
19 last date for any defendant expert depositions?

20 MS. SHARKO: I think it's something we should
21 all meet and confer on. We haven't thought this
22 through or talked about it. Hopefully, we can resolve
23 it. We have resolved almost everything else and that
24 gives us enough time to do it.

25 SPECIAL MASTER SCHNEIDER: Okay. So let me

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1 SPECIAL MASTER SCHNEIDER: So today -- today
2 is the 31st.

3 Ms. Sharko, why don't we pencil in a call or
4 a Zoom. It can always be canceled. And let me know
5 by, say, the 20th what's going on. By the 20th, have a
6 proposal on how you agree to adjust, if at all, the
7 schedule.

8 We'll tentatively schedule a Zoom on the 22nd
9 at, let's say, three, but if need be, we'll just cancel
10 it. And then we --

11 MS. SHARKO: That's good for us.

12 SPECIAL MASTER SCHNEIDER: And then we, on
13 the 12th at 4 o'clock, we'll have oral argument on the
14 two issues you are going to brief with the proviso that
15 Mr. Bernardo and I discussed that after April 9th we
16 may set up a phone call to change that proceeding,
17 depending on what the parties propose.

18 MS. PARFITT: And Judge Schneider, would 2
19 o'clock by any chance or four -- I have a standing
20 3 o'clock on Thursday.

21 SPECIAL MASTER SCHNEIDER: No problem.

22 MS. PARFITT: Would that work for others?

23 MR. TISI: I'm sorry, my only issue is I have
24 Mr. Bernardo's issue. My second COVID shot is at
25 4 o'clock -- or actually 2 o'clock your time. I'm on

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1 sum up where we are. We'll have the same schedule for
2 the privilege issues and for the O'Shaughnessy issue.

3 On the privilege issue by April 9, plaintiff
4 is going to identify the disputed documents. By
5 April 23rd defendant is going to submit its brief and
6 supporting affidavits in support of its defense,
7 objection. Plaintiff responds by May 5th. And then
8 hopefully your oral argument on May 15th at four.

9 With regard to the O'Shaughnessy issue,
10 plaintiffs have until April 9 to co-designate. If they
11 don't co-designate, then they can't take his deposition
12 in connection with this case. Presumably they will.

13 Defendants move to quash on April 23rd.
14 Plaintiffs respond May 5th. Oral argument May 12th at
15 four.

16 And by April 20, the parties will inform me
17 or the court about what they propose with regard to the
18 schedule. We'll pencil in a Zoom or a call on
19 April 22nd at four with the understanding that that may
20 be postponed.

21 And then lastly, that all this is without
22 prejudice, if after the April 9th letter from plaintiff
23 about the privilege documents and the co-designation,
24 if the parties think a phone call would help advance
25 the ball, let us know, and we'll set it up quickly and

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1 maybe we'll avoid a lot of this.

2 MR. LAPINSKI: Your Honor, the only thing
3 that I'll bring up is everything that you just said, is
4 just I want to confirm, it's May 12th at 4 o'clock that
5 we are having our next call.

6 SPECIAL MASTER SCHNEIDER: Yeah, I'm sorry
7 about that. I misspoke.

8 Okay. I think that's a good plan.

9 My thought is unless Judge Wolfson tells me
10 differently, is to make sure that everything is ready,
11 done, by the deadlines in the order, most importantly
12 to get you to trial in early 2022 on the bellwethers.

13 I assume you will let her know about you've
14 agreed on the six bellwethers, but I don't know.

15 MS. PARFITT: She's been notified, Your
16 Honor, of those. Yes.

17 SPECIAL MASTER SCHNEIDER: Great. Terrific.

18 MR. TISI: Judge, one clarification point.
19 And I just want to make sure I understand.

20 If the Pennsylvania judge has not yet ruled
21 so there is no -- we don't have a deposition to cross
22 notice, you still want our intent to cross notice on
23 this?

24 SPECIAL MASTER SCHNEIDER: No, you do have a
25 deposition to cross notice. Because until it is

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1 MR. TISI: No, not yet. It can't be noticed
2 until -- until the subpoena has been authorized under
3 the State Law of Pennsylvania. That's the question
4 mark that I have.

5 And you know, I don't know if Mr. Berman, and
6 I know we have Pennsylvania lawyers here, want to weigh
7 in on it.

8 But as I understand it procedurally, there is
9 nothing to cross notice until a subpoena is issued out
10 of the court in Pennsylvania.

11 SPECIAL MASTER SCHNEIDER: But suppose this
12 is a normal case -- this is not a normal case, right?
13 No subpoenas. No notices of deposition. We get to a
14 conference.

15 The defendant -- the plaintiff says to the
16 defendant, I want to depose Jane Doe. Do I have to
17 wait until a formal notice or subpoena is issued to
18 rule on that issue? Or can I say, send me your briefs,
19 and I'll decide whether you can go forward? I don't
20 think I need to wait.

21 MR. TISI: I agree. I agree.

22 MR. PLACITELLA: I think it's probably form
23 over substance at this point, because I thought he was
24 served with a stamped subpoena. Maybe I'm wrong, but I
25 thought he was served at this point.

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1 quashed it is alive, isn't it? Right?

2 MR. TISI: I think -- I think procedurally,
3 as I understand it -- and I'm not a Pennsylvania
4 lawyer -- until that subpoena -- as I understand the
5 process, what Judge Burlison in Missouri has done, is
6 he has ordered a commission to get a subpoena. Until
7 there is actually a subpoena that is issued -- we have
8 Pennsylvania lawyers here, Mr. Berman -- until there is
9 actually a subpoena that's issued out of the court in
10 Bucks County, I don't know that that's -- that that
11 has the --

12 SPECIAL MASTER SCHNEIDER: Why do I care
13 about the subpoena? I only care about the notice.

14 MR. TISI: I agree. I just wanted to make
15 sure --

16 MR. PLACITELLA: But it's not a subpoena that
17 notice.

18 MS. SHARKO: But now we are -- now we are
19 rearguing the same issue.

20 MR. PLACITELLA: No, no, it's not -- it
21 wasn't a subpoena.

22 MR. TISI: Right. There is not a subpoena
23 until the subpoena is actually stamped by the clerk.

24 SPECIAL MASTER SCHNEIDER: So wasn't there a
25 notice of deposition?

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1 MS. ODELL: Right, yeah.

2 SPECIAL MASTER SCHNEIDER: Yeah, I would
3 rather not kick the can down the road. I would rather
4 get this issue teed up and decided and deal with it. I
5 think that's a pretty straightforward issue.

6 The harder issue is Mr. Bernardo's request
7 that this court somehow supersede the Missouri court.
8 I don't know how you do that.

9 MR. LAPINSKI: Yeah, we think that is a
10 pretty issue as well.

11 MS. SHARKO: Well, wait for our brief. You
12 will be impressed.

13 MS. PARFITT: That might be a good trailer
14 for a movie.

15 (Discussion off the record.)

16 SPECIAL MASTER SCHNEIDER: Some poor old
17 retired magistrate judge is going to upset 225 years of
18 constitutional federalism.

19 MS. SHARKO: Okay, we are laughing.

20 MR. PLACITELLA: All right. Well, Happy
21 Easter and happy Passover.

22 SPECIAL MASTER SCHNEIDER: Have a good
23 holiday, everyone.

24 MR. LAPINSKI: Happy holidays to everybody.
25 (Deposition adjourned at 5:11 p.m.)

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C E R T I F I C A T E

I CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by and before me stenographically at the time and place aforementioned.

I FURTHER CERTIFY that I am neither attorney for nor counsel to any of the parties; parties of any of the attorneys in this action; and that I am not financially interested in the outcome of this case.

DocuSigned by:



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HOWARD A. RAPPAPORT, C.C.R
Certificate No. XI00416

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